

1961

Current Law and Social Problems edited by R. St. J. MacDonald

Daniel S. Cluster
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Cluster, Daniel S. (1961) "Current Law and Social Problems edited by R. St. J. MacDonald," *Kentucky Law Journal*: Vol. 50 : Iss. 1 , Article 11.

Available at: <https://uknowledge.uky.edu/klj/vol50/iss1/11>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Book Reviews

CURRENT LAW AND SOCIAL PROBLEMS. Edited by R. St. J. MacDonald.
University of Toronto Press, 1960. viii, 204 pp.

The six papers which comprise *Current Law and Social Problems*, edited by R. St. J. MacDonald, represent the first of a series of publications sponsored by the Faculty of Law at the University of Western Ontario for the primary purpose of promoting "collaboration among lawyers, social scientists, juristic philosophers, and others who are interested in exploring social values, processes, and institutions." (page v).

The first paper, "In What Sense is Freedom a Western Idea?", is the text of an address delivered at the University of Western Ontario by John P. Plamenatz, identified as a Fellow of Nuffield College, Oxford, and the only contributor to the volume who is not a lawyer. The title of his paper indicates that he is trying to go beyond polemics in discussing whether the idea of freedom is a uniquely western contribution to mankind. Instead, he recognizes that other traditions have placed high value on what we would recognize as freedom, but that "whatever arises from reaction against the enormous power of remote as distinct from local government, or from the great increase in social mobility, or from the revolt against ecclesiastical authority, is peculiarly western." (page 12).

He traces the high value placed on freedom by the ancient Greeks, through its relative neglect in the Middle Ages, to the renaissance of philosophic and practical concern with the concept accompanying the Reformation and industrialism. The older ideas are not seen as different from similar values in the history of Chinese or Indian thought, for example; but the forms they have taken in the modern West reflect the emergence of mass industrial society. Since these forms reflect a response to social change which happened to occur in western civilization, rather than any unique elements in western culture, it is not unlikely that they will emerge with industrialization of other parts of the world.

Plamenatz finds four expressions of freedom which he believes are peculiarly western: (1) constitutional government regulating the exercise of authority and guaranteeing the independence of the judiciary, reflecting safeguards against the increasing danger of arbitrary authority accompanying industrial development and the division of labor,

(2) representative government, as a way of preserving the idea that human authority rests on consent, for the social situation in which direct consideration and consent in law making becomes impossible for everyone, (3) liberty of conscience, as distinct from mere toleration, in order to guarantee the idea that men should live by rules which they inwardly accept when there is increasing diversity among the community in these rules, and (4) the emancipation of the individual from the family, a recognition of the emergence of the person as the basic unit whose rights might be impeded by family authority in the same way that the rights of the family needed protection from intrusion by political authority when the family was a more important social entity.

Two of the papers deal with problems of international law, one field in which there seems to be substantial agreement concerning the desirability of interdisciplinary cooperation. The first of these is a "policy-oriented" outline of the international law of fisheries by D. B. Johnson, who follows the approach of Professors Lasswell and McDougal of Yale Law School.

Professor Johnson considers such aspects of fishery resources as the process of claim and the decision process in disputes, in terms of major objectives, conservation and exploitation.

A good example of the one of the central dicta of the policy approach—the value of research and opinion from a variety of disciplines—takes form as he discusses how to guard against depletion and share resources. Johnson shows specifically how knowledge about such things as the spawning habits of species of fish, or the role of fishing in national and international economics, might be considered in matters of international fisheries law.

The second paper concerning international law, by Messrs. D. B. Sterling and W. J. MacLeod, formulates a Canadian viewpoint of international copyright control. They begin by reviewing the recent history of international copyright law, mainly the Berne Convention of 1886, which was until recently the principle treaty governing international copyright control. With four revisions since its inception, it was the major international copyright treaty until the last decade, subscribed to by the British Commonwealth, most other European countries, but not the Soviet Union, and not the United States. Since 1952 the Universal Copyright Convention, promulgated under United Nations sponsorship, has represented a significant attempt at compromise between two points of view: one, that the purpose of copyright is to protect property rights of an author in his work, held by Berne Union members, and the very different theory, endorsed by the United

States and Latin American countries, among others, that copyright is a social mechanism expressing "the need to balance the author's rights and the interests of society." (page 75). The United States position is perhaps not surprising in view of the great influence which Dean Pound's "sociological jurisprudence" has had on American lawmaking; but this reviewer finds it interesting to note that in this area the United States, traditionally the stronghold of individual rights, comes out with greater emphasis on the welfare of "society" than the European countries.

Sterling and MacLeod proceed from this review to a discussion of Canadian copyright law in relation to these international agreements and in relation to the particular aims and circumstances of Canadian publishing. It is a well-stated case in point, more explicit than most, of legislative recommendations based on a clear understanding of the values of a society, and in the light of the prevailing objective circumstances. Thus the authors' recommendations take account of a desire to promote native Canadian writing and at the same time to make all written works available at as low cost as possible, meanwhile taking account of such factors as distribution problems in a large sparsely populated nation, and the effects of other countries' copyright laws on Canadian imports and exports. The reflection of a nation's values in copyright law is pointed up by considering the Canadian case in contrast to the situation in the Soviet Union, where only a few western writers receive royalties from sales of their books because the Russians hold that "royalties to capitalists are contrary to proletarian principles." (page 105).

The next two papers reflect social problems arising out of one form of social disorganization particularly common in jurisprudence. The first of these, by Kechin Wang, re-evaluates tests for determining legal residence as applied to corporate bodies under the British Income Tax Acts, in the light of several recent decisions; and the article following, by Earl E. Palmer, deals with the remedial authority of labor arbitrators. In both cases the disorganization results from a legal concept having first become stabilized, followed by some social change which has rendered the previous concept inappropriate. In the first case the stable concept is that a person should pay income tax in his place of residence (although this legal precept is by no means universally accepted, as seen in the recent dispute concerning New Jersey residents who work in New York and vice versa). But the problem of simply defining residence arose when the income tax statutes were expanded to cover corporations as well as individuals. The discrepancy in the second case arises because labor arbitration tends to be interpreted in

judicial terms. Even though new philosophies of labor arbitration attempt to define the role of the arbitrator as distinct from that of the judge, the similarity between them is frequently carried too far; that is, because an arbitrator is something like a judge, there is some tendency, especially among men with legal training, to fall back on their notions of the judicial role in determining the scope of arbitration, without taking into account the requirements peculiar to the situation of arbitration.

The editor's own contribution to the volume, on narcotic drug addiction in Canada, concludes the volume. A discussion of the background of the problem—a survey of the kinds of drugs used and their effects, along with some discussion of the illicit traffic and extent of addiction in Canada—constitutes more than half the article. MacDonald follows with an outline of Canadian law governing the import, sale, distribution, and use of narcotics. Although addiction is not itself illegal in Canada, possession of narcotics through unauthorized channels is; and there are especially heavy penalties for trafficking in narcotic drugs.

Several proposals for dealing with addicts are mentioned, which run the usual gamut: from correctional officers advocating a policy of long incarceration with its emphasis on protection of society, to psychiatrists primarily oriented toward rehabilitation of the individual. A Special Committee of the Canadian Senate, reporting on its investigation of narcotics addiction in 1955, advocated combining vigorous enforcement with the provision of facilities for treatment of narcotics addiction. They rejected plans based on the British system, under which addicts can obtain narcotics at nominal prices under medical supervision, because they felt that the Canadian situation was not comparable with that in Britain. And MacDonald, in concluding, emphasizes the importance of studying the aspects of the problem peculiar to Canada: “. . . we should bear in mind when we analogize from British and European experiences, which so often are referred to in seeking solutions, that our societal customs, traditions, moral standards, behavior patterns, processes of disorganization and reorganization are not British, European, or, for that matter, entirely American, and that solutions developed in other lands will not necessarily or automatically work well in the context of our own society.” (pages 203-204).

Since the title of the volume and the introductory statement quoted from above suggest that law and social problems have something to do with each other, and since this reviewer's social science training has influenced him to look for these connections, the foregoing observations have tended to focus on those aspects of the papers which bring

these connections out. Let us recapitulate in a more general way the social science aspects of the legal problems dealt with in this book.

First, the legal system of a society is an integral part of the values and institutions of that society. But—a second generalization—at any given time and place, some part of the legal system may not be in harmony with the larger social configuration. Taken together, these two propositions will suggest to the prudent jurist (forgive me!) that law which violates the existing social values too greatly will not be tolerated, but is likely to break down in poor enforcement, refusal to convict, etc. But they also suggest that legal sanctions can promote and solidify social values already present.

A third generalization: even though there may be conflict on some issues between parties—whether between nations in international law or between opposing interests in labor-management relations—by searching for common goals some consensual basis on which to build law may be found. And fourth, by understanding the relation of positions within a society to each other, better law may be derived governing the relations among people who occupy those positions.

Although this book has not made explicit the ways in which current law and social problems are interrelated, it is a very interesting case-book, useful in stimulating a beginning examination of these relationships.

*Daniel S. Claster**

* Instructor in Sociology, University of Kentucky.